

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VERONICA GARCIA,

Plaintiff,

vs.

No: 19-cv-00641

DEFENDANT MICHAEL MARTINEZ,
STATE OF NEW MEXICO and its subsidiary entities,
NEW MEXICO CORRECTIONS DEPT. and
WESTERN NEW MEXICO CORRECTIONAL
FACILITY, DEFENDANT ROBERTA LUCERO
ORTEGA, Warden at the Western New Mexico
Correctional Facility, and DEFENDANT PETE
PEREZ, Deputy Warden at the Western New Mexico
Correctional Facility,

Defendants.

MOTION TO REMAND

Plaintiff, by and through her attorneys of record, Gorence & Oliveros, P.C. (Louren Oliveros, Robert J. Gorence and Amye G. Green) and Aequitas Law of New Mexico, LLC (Anna C. Martinez), and for her Motion to Remand, states as follows:

1. On May 14, 2019, Plaintiff filed a Complaint for Civil Rights Violations, Violations of the First Amendment, Assault, Battery, and Violations of the New Mexico Constitution under the New Mexico Tort Claims Act (“Complaint”). *See* Doc. 1, Ex. A.
2. On June 5, 2019, Plaintiff mailed copies of her Complaint and Summons to Defendants, State of New Mexico, New Mexico Corrections Department, Western New Mexico Correctional Facility, Warden Roberta Lucero Ortega, and Deputy Warden Pete Perez. Plaintiff filed her Returns of Service in State Court and attached U.S. Mail certified mail-return receipt cards to her Returns of Service. *See* Ex. 1, USPS Tracking of U.S. Certified mailed copies of Complaints and Summons to Defendants.

3. USPS tracking establishes that mailed copies of the Complaint and Summons to Defendants, State of New Mexico, Western New Mexico Correctional Facility, Warden Roberta Lucero Ortega, and Deputy Warden Pete Perez were delivered and picked up at the postal facility on June 10, 2019. *See* Ex. 1. While the USPS tracking for the New Mexico Corrections Department appears to not have been updated by USPS, the return receipt shows a signature for delivery in Santa Fe. *See* Ex. 1. Undersigned counsel contacted USPS customer service, who indicated that the State of New Mexico Corrections Department address was improperly entered in place of the Santa Fe facility address on June 11, 2019. *See* Ex. 2, Affidavit of Amye Green.

4. On June 6, 2019, Plaintiff personally served Defendant Michael Martinez with a Summons and Complaint.

5. Pursuant to 28 U.S.C. § 1446(b), the notice of removal of a civil action or proceeding “must be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

6. Defendants filed their Notice of Filing Petition for Removal on July 15, 2019, more than 30 days after the receipt by Defendants of the U.S. Mail certified copies of the Complaint and Summons and more than 30 days after Plaintiff personally served Defendant Michael Martinez.

7. As such, Defendants’ Notice of Removal is untimely under 28 U.S.C. § 1446(b).

8. Pursuant to 28 U.S.C. § 1447(c), Plaintiff requests that this Court remand the case back to the First Judicial District Court, County of Santa Fe. This Motion is timely under 28 U.S.C. § 1447(c).

CONCLUSION

FOR THESE REASONS, Plaintiff requests that this Court remand this case back to the First Judicial District Court, County of Santa Fe, and for any other relief this Court deems just and proper.

Respectfully Submitted,

/s/ Amye G. Green

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—and—

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of August, 2019, I filed the foregoing electronically through the Court's CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Luis Robles

Email: luis@roblesrael.com

Marcus Rael, Jr.

Email: marcus@roblesrael.com

Attorneys for Defendants

/s/ Amye G. Green

Amye G. Green